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28E-FILED on 02/07/09IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF CALIFORNIA  
SAN JOSE DIVISIONTheresa Bradley, Psy.D.,  
Plaintiff,  
v.  
PayPal, Inc.,  
Defendant.No. C-08-03924 RMW  
ORDER TO SHOW CAUSE

At the January 23, 2009 hearing for PayPal's motion to dismiss, PayPal argued that although the complaint states that Paypal violated federal law, the supporting allegations fail to state a federal claim. For the reasons stated below, the court finds that no diversity jurisdiction exists and orders plaintiff to show cause why her complaint should not be dismissed for lack of subject matter jurisdiction.

District courts have jurisdiction in civil actions where there is complete diversity of citizenship among the parties and the amount in controversy exceeds \$75,000, exclusive of interest and costs. *See 28 U.S.C. § 1332(a)*. Generally, the amount in controversy is determined from the face of the pleadings. *See Pachinger v. MGM Grand Hotel-Las Vegas, Inc.*, 802 F.2d 362, 363 (9th Cir.1986). The sum claimed by the plaintiff controls so long as the claim is made in good faith. *See St. Paul Mercury Indem. Co.*, 303 U.S. at 288, 58 S.Ct. 586. "To justify dismissal, 'it must appear to a legal certainty that the claim is really for less than the jurisdictional amount.'" *Budget Rent-A-Car*, 109 F.3d at 1473 (quoting *St. Paul Mercury Indem. Co.*, 303 U.S. at 289, 58 S.Ct. 586).

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2 *Crum v. Circus Circus*, 231 F.3d 1129, 1131 (9th Cir. 2000).3 A case may be dismissed when a limitation on damages makes it impossible for the plaintiff  
4 to meet the amount-in-controversy requirement. *Pachinger v. MGM, Grand Hotel-Las Vegas, Inc.*,  
5 802 F.2d 362, 364 (9th Cir. 1986). PayPal's User Agreement provides in Subsection 14.6:6 **Limitations on Liability.** In no event shall we, our parent, employees or our supplies  
7 be liable for lost profits or any special incidental or consequential damages arising  
8 out of or in connection with our web site, our service, or this agreement (however  
arising, including negligence). . . . Our liability, and the liability of our parent,  
employees, and suppliers, to you or any third parties in any circumstance is limited to  
the actual amount of direct damages.9 Def.'s Reply ISO Mot. to Dismiss Ex. A, pg 23. Because plaintiff has apparently suffered just \$1500  
10 in direct damages, her case does not meet the amount in controversy needed for diversity  
11 jurisdiction. Even if the "Limitation on Liability" provision is for some reason unenforceable,  
12 plaintiff cannot claim damages in excess of \$75,000 in good faith. Therefore, diversity jurisdiction  
13 does not exist.14 Defendant's contention that the complaint fails to allege a claim for relief based upon a  
15 federal question appears to have merit. The court therefore orders plaintiff to show cause in writing  
16 why the complaint should not be dismissed for failure properly allege a claim involving a federal  
17 question. Plaintiff shall file papers making such a showing by February 27, 2009. Defendant shall  
18 file any opposition by March 6, 2009 and plaintiff may reply by March 13, 2009. The matter will  
19 then be submitted on the papers unless the court orders a hearing.

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DATED: 02/07/09  
RONALD M. WHYTE  
United States District Judge

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1 **Notice of this document has been sent to:**

2 **Counsel for Plaintiff:**

3 Theresa Bradley, *Pro Se*  
6418 Old Post Court  
4 Columbus, GA 31909

5 **Counsel for Defendants:**

6 Carlos Gregory Martinez cmartin@isonlaw.com

7 Counsel are responsible for distributing copies of this document to co-counsel that have not  
8 registered for e-filing under the court's CM/ECF program.

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10  
11 **Dated:** 02/07/09

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JAS  
13 Chambers of Judge Whyte  
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